

REMARKS

Claims 11 through 19 and 32 through 41 were pending in the application. By this amendment, claims 11, 15, 32, and 38 have been amended, and claim 37 has been cancelled. Reconsideration and withdrawal of the rejections is requested in view of the foregoing changes to the claims and the following remarks.

The following remarks are intended to address all of the grounds for rejecting the claims set forth in the pending Office Action.

Turning to the claim rejections under 35 U.S.C. §§ 102(b) and (e) and 103(a):

- Claims 11 and 12 were rejected as being anticipated by Liddicoat et al. (US 6,702,826);
- Claims 11-19, 32-36, and 39 were rejected as being anticipated by Filipi et al. (US 5,088,979);
- Claims 32, 37, 38, and 40 were rejected as being anticipated by Matsui et al. (US 6,352,503); and
- Claim 41 was rejected for obviousness over the Matsui patent in view of Harrison (US 5,403,326).

Without acceding to any of the grounds for rejection, Applicants have amended claim 11 to recite the step of:

advancing an anchor delivery device through the patient's
esophagus into the patient's stomach.

Support for this feature is provided in the specification at, for example, paragraphs 0251-0252 and FIGS. 40 and 41. This method step is not taught or disclosed in the Liddicoat patent, which describes instead a system and method for performing a heart valve annuloplasty by inserting a device into the left atrium via pathways that do not include the esophagus or stomach. (See col. 3, ll. 29-44). Nor is this step taught or disclosed in the Filipi patent, which describes instead a system and method for esophageal invagination that includes introducing a remotely operable fastening assembly (e.g., a stapler) through an operating channel / insufflation port formed laparoscopically through the abdominal wall. (See col. 3, ll. 47-66; col. 4, ll. 40-51). Accordingly, the rejections

of (a) claims 11 and 12 as being anticipated by the Liddicoat patent, and (b) claims 11-14 as being anticipated by the Filipi patent should be withdrawn.

Similarly, claim 15 was amended to recite the method step of:

advancing an anchor delivery device through a patient's esophagus
into the patient's stomach.

The claim was further clarified to recite that "the anchor delivery device [is] used for securing the first plurality of tissue folds." These features are not taught or disclosed in the Filipi patent which, as noted above, describes instead a system and method for esophageal invagination that includes introducing a remotely operable fastening assembly (e.g., a stapler) through an operating channel / insufflation port formed laparoscopically through the abdominal wall. (See col. 3, ll. 47-66; col. 4, ll. 40-51). Accordingly, the rejections of claims 15-19 as being anticipated by the Filipi patent should be withdrawn.

Claim 32 was amended to recite the method step of:

advancing a plication apparatus through a first lumen contained in
said overtube such that a distal portion of said plication apparatus is
located within the patient's stomach.

This feature is supported in the specification at, for example, paragraphs 0251-0252 and FIGS. 40 and 41, and was contained in original claim 37 (which was cancelled by this amendment). This method step is not taught or disclosed in the Filipi patent for the reasons discussed above and as acknowledged in the Office Action by the fact that claim 37 was not rejected over Filipi. For this reason, the rejections of claims 32-36 and 39 as being anticipated by the Filipi patent should be withdrawn.

Claim 32 was further amended to recite the method steps of approximating "and deploying a tissue anchor through" each of a first and a second plurality of tissue folds within the patient's stomach. Support for these features is provided in the specification at, for example, paragraphs 257 and 147-163 and at FIGS. 40-41 and 21. These method steps are not taught or disclosed in the Matsui patent, which instead describes deployment of clipping devices 187 (rather than anchors) that are fastened over the tissue fold (rather than through the tissue fold). For this reason, the rejections of claims 32, 37, 38, and 40 as being anticipated by the Matsui patent should be withdrawn.

Finally, the Harrison patent does not provide the subject matter recited in claim 32 that is missing from the Matsui patent. Accordingly, the rejection of claim 41 over the combination of Matsui and Harrison should also be withdrawn.

In view of the foregoing, the Application is in condition for allowance. A Notice of Allowance is requested.

Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Similarly, unless explicitly stated, nothing contained or not contained in this paper should be construed as an assent to any of the Examiner's stated grounds for rejecting the claims, including specifically the Examiner's characterization of the teachings of the cited art and the Examiner's contentions that any combinations of cited art would have been obvious. Rather, the present amendments to the claims and Remarks are an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

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Examiner: Woo, Julian W.

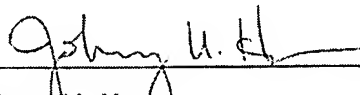
Attorney Docket No.: USGINZ02511

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **USGINZ02511**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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